IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.MC.No. 1102 of 2006(C)

CRRP.58/2003 of SESSIONS COURT, PALAKKAD

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PETITIONER: ACCUSED

VENKITESH,
S/O.SUNDARA MUTHALIAR,
PARAKALAM, NEELIPADAM,
NALLEPALLY, CHITTUR, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.V.BIPIN

RESPONDENTS: COMPLAINANT/NON PARTY

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1. JAYAPRAKASH,
S/O.PORUVAYIL KUNCHU,
PORUVAYIL, AYAKKAD AMSOM,
ALATHUR, PALAKKAD.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR
SRI.S.SUJIN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 1102 OF 2006

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Dated this the 10th day of January 2007

O R D E R

The petitioner, who is the accused in CMP 1924/2000 in the file of Judicial First Class Magistrate Court, Palakkad with respect to the offence under section 138 of the Negotiable Instruments Act, has sought for getting the above proceedings quashed. It is the case of the petitioner that the notice issued in compliance of the provision under section 138 (b) is totally defective as the statute envisages a demand for payment of cheque amount. As per Annexure B, notice, the demand is for payment of the promissory note amount. The petitioner has relied on the decision reported in **K.R. Indira v. Dr. G. Adinarayana** (2003 (8) SCC 300), which is with respect to somewhat a similar facts situation, wherein it has held that what is necessary is demand for making payment of the amount covered by the bounced cheque and hence non compliance of section 138 (b) is evident.

2. In the instant cases, as revealed from the pleadings in the CMP the petitioner/accused, his mother, sister and two brothers and maternal uncle executed a promissory note and received a sum of Rs.5,00,000/- from the respondent/complainant. Subsequently after about three years the petitioner issued the impugned cheque which

was dishonored for insufficient funds. It is in consequence of the same that the respondent has resorted to proceedings under section 138 and issued lawyer notice. As the first notice was not served he sent another notice as well containing the same demand for repayment of the promissory note amount. Ofcourse, it was found that the notice was sent in time as per the stipulations in section 138. But the repeated demand also is for repayment of the promissory note amount.

3. In the circumstances and in view of the decision of the Supreme Court, I find that the prosecution initiated cannot be sustained and the same is quashed herewith.

The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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